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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 ANTHONY PHILYAW,) NO. CV 22-8007-CJC(E)
12)
13 Petitioner,)
14)
15 v.) ORDER OF DISMISSAL
16)
17 S. MOORE,)
18)
19 Respondent.)
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18 On November 1, 2022, Petitioner filed a "Petition for Writ of
19 Habeas Corpus by a Person in State Custody." The Petition challenges
20 Petitioner's conviction and sentence in Los Angeles Superior Court
21 case number BA 447321 (Petition at 2). Petitioner previously
22 challenged the same conviction and sentence in a habeas petition filed
23 in this Court in 2020. See Philyaw v. Madden, No. CV 20-4436-CJC(E)
24 ("the prior habeas petition"). By Judgment entered January 14, 2021,
25 this Court denied and dismissed the prior habeas petition with
26 prejudice.

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1 The Court must dismiss the present Petition in accordance with
2 28 U.S.C. section 2244(b) (as amended by the "Antiterrorism and
3 Effective Death Penalty Act of 1996"). Section 2244(b) requires that
4 a petitioner seeking to file a "second or successive" habeas petition
5 first obtain authorization from the Court of Appeals. See Burton v.
6 Stewart, 549 U.S. 147, 157 (2007) (where petitioner did not receive
7 authorization from Court of Appeals before filing second or successive
8 petition, "the District Court was without jurisdiction to entertain
9 [the petition]"); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir.
10 2000) ("the prior-appellate-review mechanism set forth in § 2244(b)
11 requires the permission of the court of appeals before 'a second or
12 successive habeas application under § 2254' may be commenced"). A
13 petition need not be repetitive to be "second or successive," within
14 the meaning of 28 U.S.C. section 2244(b). See, e.g., Thompson v.
15 Calderon, 151 F.3d 918, 920-21 (9th Cir.), cert. denied, 524 U.S. 965
16 (1998); Calbert v. Marshall, 2008 WL 649798, at *2-4 (C.D. Cal.
17 Mar. 6, 2008). Petitioner evidently has not yet obtained
18 authorization from the Ninth Circuit Court of Appeals.¹ Consequently,
19 this Court cannot entertain the present Petition. See Burton v.
20 Stewart, 549 U.S. at 157; see also Remsen v. Att'y Gen. of Calif., 471
21 Fed. App'x 571, 571 (9th Cir. 2012) (if a petitioner fails to obtain
22 authorization from the Court of Appeals to file a second or successive
23 petition, "the district court lacks jurisdiction to consider the

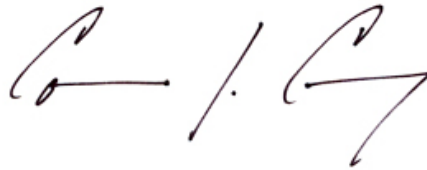
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25 ¹ The docket for the United States Court of Appeals for
26 the Ninth Circuit, available on the Pacer database on
27 www.pacer.gov, does not reflect that anyone named Anthony Philyaw
28 has received authorization to file a second or successive
petition. See Mir v. Little Company of Mary Hosp., 844 F.2d 646,
649 (9th Cir. 1988) (court may take judicial notice of court
records).

petition and should dismiss it.") (citation omitted).

For all of the foregoing reasons, the Petition is denied and dismissed without prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: November 4, 2022.

A handwritten signature in dark ink, appearing to read 'C. J. Carney', written over a horizontal line.

CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE

PRESENTED this 3rd day
of November, 2022, by:

/s/
CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE

